vendor is the one to bear the loss, the reason given being, that, in every contract for the conveyance of property, there is an implied condition that the subject matter of the contract shall be in existence when the time for performance arrives. If it has ceased to exist when that time arrives, each party is discharged from his contract. *Stent* v. *Bailis,* 2 P. Wms. 220; *Powell* v. *Dayton S. & G. R. R. Co.,* 12 Ore. 488, 8 Pac. 544; *Gould* v. *Murch,* 70 Me. 288, 35 Am. Rep. 325; *Wells* v. *Calnan,* 107 Mass. 514; *Hawkes* v. *Kehoe,* 193 Mass. 419, 10 L. R. A. (N. S.) 125. Where the vendor is unable to make good title, a loss, occurring to the premises by fire, pending the time when he will be able to convey a good title, falls upon him, for the contract is not complete so as to give the purchaser equitable title. *Phinizy* v. *Guernsey,* 111 Ga. 346, 78 Am. St. Rep. 207, 50 L. R. A. 680; *Lombard* v. *Chicago Sinai Cong.,* 64 Ill. 477; *Kinney* v. *Hickox,* 24 Neb. 167; *Christian* v. *Cabell,* 22 Gratt. (Va.) 82. But see *Fernandez* v. *Soulie,* 28 La. Ann. 31.

WILLS—CONSTRUCTION—TECHNICAL WORDS—"HEIRS."—Testator had nine children, five of whom had homes of their own, and to each of whom he had advanced the sum of two thousand dollars and had charged each with this sum in his book of advancements. To the other four he devised his mansion farm as follows: "To my two youngest sons and my two daughters to be held jointly and equally, and in case of the death of one, then that portion shall descend to the other three, and so on until the death of the last one, at which time I direct my executors that they expose the said real estate to public sale and divide the proceeds equally among their heirs, share and share alike." Three of such children died unmarried and the fourth, a son, John, left a widow and three children. The heirs of the four devisees were a surviving brother, Jeremiah, two surviving sisters, Mrs. Gray and Mrs. Buck, the children of Mrs. Henderson, a deceased sister, the children of Mrs. Buck, also a deceased sister, and the children of John who are the appellants here. In disposing of the residue of his estate the testator directed an equal distribution of the same among and between his own lineal heirs. *Held,* on appeal by the children of John, that the entire proceeds of the mansion farm did not go to John's children, but should be divided per stirpes, in six equal parts, among the heirs of the four devisees and as such John's children were entitled to one share. *In re Beck's Estate* (1909), — Pa. —, 74 Atl. 607.

A testator may use the word "heirs" synonymously with "children," but unless his intent to do so can be gathered from the language used, the general rule that the word "heirs" is to be understood in its legal or technical sense, unless the context shows that it was meant in its popular sense, must be applied. *Porter's App.,* 45 Pa. St. 201; *Ely's App.,* 50 Pa. St. 311; *Criswell's App.,* 41 Pa. St. 288; 2 Jarm. Wills *61, Note 1; UNDERHILL, WILLS, § 607. It is significant that in disposing of the residue of his estate the testator directed an equal distribution of the same among his own lineal heirs, while with respect to this particular fund he directs an equal distribution among the heirs of the devisees of the farm. Certainly, as STEWART, J., says in his opinion: "When a testator uses words of technical import, differing in signification from those used with respect to wholly distinct and separate

bequests such circumstance in itself affords no ground for inference that he used them as equivalent; the presumption rather being that he used them with intelligent discrimination to indicate his exact purpose." See also *Nightingale* v. *Shelden,* Fed. Cas. 10,265, 5 Mason 336; *Clark* v. *Mosely,* 1 Rich. Eq. 396, 44 Am. Dec. 229. The general scheme of the will clearly contemplates an equal distribution of the entire estate between all of the testator's children, as far as practicable. Had the word "heirs" been construed to mean "children" the purpose of the testator would have been defeated.

WILLS—HOLOGRAPHIC—STATUTORY REQUIREMENTS—DATING.—The instrument which purports to be the holographic will of Horace A. Noyes, was written upon a letterhead of the deceased, on which the following printed words appear: "H. A. Noyes, Dealer in Wines, Liquors, and Cigars, Laurel, Mont., ... 190....". These blanks were filled in in the handwriting of the testator so as to make the date, Feb. 23, 1903. Sec. 4727 of the Revised Codes of Montana declares: "A holographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, * * * and need not be witnessed." *Held,* that the instrument was without date and hence invalid as a will. *In re Noyes Estate,* and *Noyes* v. *Gerard* (1909), — Mont. —, 105 Pac. 1017.

An instrument, complete in every other respect, but without date is invalid as a holographic will. *Estate of Martin,* 58 Cal. 530. Filling in the blanks in a printed form is not sufficient. *Estate of Rand,* 61 Cal. 468, 44 Am. Rep. 555. It must be entirely written, entirely dated, and entirely signed by the testator himself. *Estate of Billings,* 64 Cal. 427, 1 Pac. 701. An erroneous date, in the handwriting of testator, will not invalidate it. *Estate of Fay,* 145 Cal. 82, 78 Pac. 340, 104 Am. St. Rep. 17. So also, the testator may adopt any date, previously written by himself, as the date of his will. *Estate of Clisby,* 145 Cal. 407, 78 Pac. 964, 104 Am. St. Rep. 58. But a dating is not sufficient if it omits either the day, the month, or the year. *Fuentes* v. *Gaines,* 25 La. Ann. 85. In one Pennsylvania case a will, dated only Mar. 4, was upheld. Whether or not this was a sufficient dating was not considered, the case turning entirely on the question of the capacity of the testator. *Estate of Sullivan,* 130 Pa. St. 342. There are cases whose reasoning would seem to establish that the requirement of dating is directory rather than mandatory. *Estate of Fay,* supra; *Estate of Clisby,* supra; *In re Skerrett,* 67 Cal. 585, 8 Pac. 181; *Gaines* v. *Lizardi,* 9 Fed. Cases 1043, No. 5175. The true rule would seem to be, however, that the requirement of dating is as much mandatory as that of signing and the "year" printed or written by another is not a date in the handwriting of the testator, which is made the essential of a valid holographic will. *Fuentes* v. *Gaines,* supra; *Succession of Robertson,* 49 La. Ann. 868, 21 South. 586, 62 Am. St. Rep. 672; *In re Plumel's Estate,* 151 Cal. 77, 90 Pac. 192, 121 Am. St. Rep. 100.

WITNESSES—SCOPE OF CROSS-EXAMINATION—LIMITED TO SUBJECT MATTER OF EXAMINATION IN CHIEF.—The lower court, in an action to recover damages for personal injury, sustained an objection to a question, asked of a